COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES

Rules Committee Minutes

Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603

Wednesday, July 9, 2008

Attending:
Commission Members: Anna Marie Scheyett, PhD, Marvin Swartz, MD, Dr. Diana J. Antonacci, Dr. Richard Brunstetter, Laura C. Coker, Dorothy Rose Crawford, Sandra C. DuPuy, Pearl Finch, Michael J. Hennike, George Jones, Martha Martinat, Connie Mele, Emily Moore, Pamela Poteat, Jerry Ratley

Excused Absences:
Pender McElroy, Mazie Fleetwood, Thomas Fleetwood, Ann Forbes

Ex-Officio Committee Members: Peggy Balak, Martha Brock, Sally Cameron, Yvonne Copeland, Deby Dihoff, Larry Pittman, Ellen Russell, Mark Sullivan, Robin Huffman

Division Staff: Denise Baker, Marta T. Hester, Andrea Borden, Dr. Michael Lancaster, Leesa Galloway, Laura White, Susan Saik, MD, Jim Jarrard, William Bronson, Shealy Thompson

Others: Diane Pomper, Stephanie Alexander, Gene Rodgers, Louise G. Fisher, Erin McLaughlin, Jenni Norman, Ann Rodriguez, Paula Cox Fishman, Joe Donovan, John L. Crawford, Betty Gardner

Handouts:
Mailed Packet:

1) July 9, 2008 Rules Committee Agenda
2) April 9, 2008 Draft Rules Committee Minutes
3) Proposed Amendment of 10A NCAC 28C .0201 – State Facility Environment
4) Proposed Amendment of 10A NCAC 26C .0100 – Designation of Facilities-Involuntary Clients (**distributed at meeting**)
5) Proposed Amendment of 10A NCAC 27G. 0600 – Area Authority or County Program Monitoring of Facilities and Services

Additional Handouts:

1) Comment Grid for rules submitted at July 9, 2008 Meeting
2) Proposed Amendment of 10A NCAC 26C .0100 – Designation of Facilities-Involuntary Clients
3) Proposed Amendment of 10A NCAC 27G. 0600 – Area Authority or County Program Monitoring of Facilities and Services (**revisions from mail out packet**)
4) William Bronson's handout on presentation "*Scheduling Controlled Substances"*
5) Comments from Mecklenburg Consumer and Family Advisory Committee on 10A NCAC 28C .0201 – State Facility Environment

Call to Order:
The Rules and Advisory Committees met jointly beginning at 9:30 am.

Dr. Anna Marie Scheyett, Co-Chair, Rules Committee, called the meeting to order at 9:40 am. Dr. Scheyett asked the Rules and Advisory Committees to observe a moment of silence with a special acknowledgement of our troops who are fighting overseas. She issued an Ethics Awareness and Conflict of Interest reminder, which was followed by introductions. J. Michael Hennike, Rules Committee member, informed the members that he planned to recuse himself from the vote on Rule 10A NCAC 28C .0201 on State Facility Environment.

Martha Martinat, Rules Committee member, advised that she was present at the prior Rules Committee meeting held on April 9, 2008, and requested that the minutes be corrected accordingly.

Approval of Minutes:
Upon motion, second and unanimous vote, the Rules Committee approved the minutes of the April 9, 2008 Rules Committee meeting as amended to reflect Ms. Martinat's attendance.

Rule 10A NCAC 28C .0201 – Proposed Amendment of State Facility Environment:
Dr. Michael Lancaster, Co-Director, NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS) and Interim Director of Central Regional Hospital, and Dr. Susan Saik, Medical Director at Central Regional Hospital, each delivered presentations on the rule. The presentations indicated that evidence reveals that smoking is indeed an addiction and that the vast majority of illnesses and deaths in mental health patients is due to cigarette smoking. Dr. Saik also mentioned the financial cost associated with purchasing cigarettes for mental health consumers and indicated that mental health patients require a higher dosage of medication for treatment because of the impact of nicotine on their medical condition. She further added that wellness and health is part of the total recovery approach to mental health treatment programs. Dr. Saik described that smoking cessation information as well as medication options related thereto are made available to all patients at Central Regional Hospital.

The following questions and comments were received from the committee members:

- Laura White, Team Leader, State Operated Services, NC DMH/DD/SAS responded yes when asked by a Committee member whether the rule applied to all state facilities.

- Dr. Brunstetter, Committee member, questioned how noncompliance issues would be addressed should the amendment to this rule be adopted.
    - Dr. Saik advised the Committee that Central Regional Hospital has a Patient Quality Council to receive patients' input about how matters should be addressed; that council would be consulted regarding solutions to noncompliance issues.

- Dr. Scheyett asked about the average length of stay at Dix Hospital.
    - Dr. Saik responded that it depends on the unit involved as well as the services received.

- Dr. Scheyett also questioned whether a smoking cessation program would be Medicaid reimbursable.
    - Dr. Lancaster expressed uncertainty but advised that he would investigate it further.
    - Marvin Swartz, MD, Chairman, Advisory Committee, added that most state Medicaid programs pay for prescribed smoking cessation programs including North Carolina.

- Dorothy Crawford, Committee member, asked about the rights of nonsmokers and secondhand smokers in the facilities.
    - Dr. Saik responded by informing the Committee members that approximately 20% of the adults begin smoking while they are in the facilities.

- Martha Brock, PAIMI Coordinator/Intake Specialist Disability Rights North Carolina, Ex officio Committee Member, expressed her opposition to mandating that people should go through smoking cessation in a facility—her concerns revolved around client rights and choice.
    - Dr. Lancaster shared with the members that no other hospitals outside of mental health facilities allow smoking and described the parity issues associated with that.

- Sandra C. DuPuy, Committee member, advised that Dr. Saik should move forward with her plan to provide smoking cessation information to patients regardless of the outcome of the proposed amendment of the rule. She further added that the issue involves a matter of choice because it seemed unfair to force someone to stop smoking for a short-time period while they are in a facility and then send them back into the community. It appears that the position for short term versus long term stay should be different.

- George Jones, Committee member, stated that his concern is the extra stress that will be forced on patients because of not being allowed to smoke.

- A Committee member asked Dr. Lancaster how Broughton Hospital came to be nearly smoke-free. Laura White commented on the point mentioned by Dr. Saik – that Dorothea Dix really took the lead and, based on research, wanted to do a pilot on their adult admissions unit. Dorothea Dix was very excited by the results and now all of the hospitals were very interested in moving forward and becoming a non-smoking facility. Because of the uncertainty regarding the proposed amendment to the rule, the program to become smoke-free was placed on hold because they did not want to be in conflict with the rule. It should be noted that up until this point Broughton Hospital had almost achieved becoming a smoke free campus.

Following several questions and comments, Dr. Lancaster asked the Rules Committee for permission to use a one-year pilot program to prevent smoking in a state mental health operated facility and then report back to the members with the results.

Dr. Richard Brunstetter made a motion that the pilot program be conducted for six months in a hospital and that data be collected and reported to the NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (NC Commission for MH/DD/SAS) following the conclusion of the program. Dr. Scheyett added that if they pass the motion it would be a recommendation to take to the full Commission that they request a pilot program. Dr.

Scheyett asked that between now and the full Commission meeting, the Division in addition to members of the Rule Committee, work together and flush out the idea of the pilot program so that some of the Rule Committee member's questions could be answered by the August 21st meeting. The following Committee and Ex-officio Committee members volunteered to work on the project: Jerry Ratley, Pearl Finch, Martha Brock, and Deby Dihoff.

Upon motion, second, and majority vote, the Rules Committee voted on a proposal for pilot program development for the State Facility Environment Rule to be presented to the Full Commission for a vote at the meeting to be held on August 21, 2008. There were two opposed(Laura Coker and Sandra DuPuy) and one abstention(J. Michael Hennike) on the vote.

10A NCAC 26C .0100 – Proposed Amendment of Designation of Facilities-Involuntary Clients

Dr. Michael Lancaster, Co-Director, NC DMH/DD/SAS, presented the proposed amendment of Designation of Facilities-Involuntary Clients rule. The proposed amendments are necessary to provide accurate information concerning designating facilities for the custody and treatment of involuntary clients. Dr. Lancaster stated that the rules had been presented to the Committee and revisions had been made since the previous presentation. The rule has been further amended to eliminate the option of facilities licensed as Social Setting Detoxification for Individuals with Substance Abuse Disorders and Residential Treatment or Rehabilitation for Individuals with Substance Abuse Disorders applying for designation as facilities for the custody and treatment of involuntary clients. Facilities licensed as Non-hospital Medical Detoxification, Facility based Crisis, and Inpatient Hospital Treatment for Individuals with Mental Health or Substance Abuse Disorders will remain eligible to apply for this designation. The rule has also been revised to clarify staffing requirements. This is a Secretary rule and presented for information and comment. Therefore, no action is required.

The following questions and comments were raised regarding the rule on the Designation of Facilities-Involuntary Clients:

- Dr. Swartz asked if they were substance abuse commitments or mental hospital commitments.
  - Dr. Lancaster stated that they would primarily be substance abuse commitments since they are non-medical detox programs.

- Dr. Swartz added that this was an issue that should have more clarity as the rule goes forward. Dr. Swartz stated that at this time a substance abuse commitment can go to one of these facilities, so these facilities would have to meet requirements for the mental health commitment.

- Mark Sullivan, Executive Director, Mental Health Association in Orange County, Ex-Officio Committee Member, asked what was considered adequate staffing.
  - Dr. Lancaster stated that this was language from the Center for Medicare and Medicaid Services (CMS) and the Joint Commission On Accreditation Of Health Care Organizations (JCAHO); adequate staffing is dependent upon the population served such that a more aggressive population may require a higher staffing level while a less aggressive population may require lower staffing.

- Stephanie Alexander, Chief, Mental Health Licensure and Certification Section, NC Division of Health Service Regulation (DHSR), stated that facility based crisis and non-medical hospital detox are already facilities that are allowed to be designated for involuntary clients. The old rule does not specify what facilities are allowed to have involuntary clients. This rule clarifies that these are the facilities that are able to apply to be designated. The .3100 Rule is the rule about non-hospital medical detox and that rule specifies a minimum of one direct care staff member shall be on duty at all times for every nine or fewer client. The .5000 Rules are the rules for facility based crisis stating that each facility shall maintain staff to client ratios that ensures the health and safety of clients served in the facility. Ms. Alexander stated that it is their job when they do the surveys (annual surveys of all residential facilities) to look at services being provided and whether or not the treatment needs are being meet. They would be looking at the staffing and the cite facilities if they are not maintaining staffing to meet the needs of those clients; DHSR already provides notice of noncompliance issues to DMH/DD/SAS.

- Dr. Swartz stated that the other questions the Commission had regarding this rule were two-fold. The first issue involved seclusion and restraint rules such as whether these facilities taking involuntary clients need to meet seclusion and restraint rule requirements.
  - Ms. Alexander stated that the answer was yes.
  - Connie Mele, Rules Committee Member, indicated that restraint and seclusion is not required in nonhospital medical detoxification facilities which accept only individuals with substance abuse issues.

- Dr. Swartz advised that the second issue involves EMTALA and hospital emergency departments (ED) seeking authorization (LME) for transfer; this may create a problem for those EDs.
  - Dr. Lancaster stated the North Carolina Hospital Association has proposed different scenarios to CMS in an effort to get a clarification on that issue. There has been informal interpretation from the Attorney General's Office involving the treatment capacity of the facility. Dr. Lancaster further added that they share their concerns and are continuing to try and get clarification from CMS regarding those scenarios.

- Connie Mele, Rules Committee Member, questioned whether a social setting detoxification facility would be able to accept involuntary commitments if it met all of the requirements for doing so. Ms. Mele elaborated that the facility in question "looks like" a non-hospital medical detoxification facility but has more than 16 beds.
  - Ms. Alexander responded that they could not. Ms. Alexander explained that building codes as well as rules applicable to these settings are not congruent with them accepting these patients. She added that she would need additional information to evaluate a specific social setting detoxification unit as described by Ms. Mele.

- Joe Donovan, attendee, stated that since there was discussion about locked facilities, the client advocacy functions should be considered also. Mr. Donovan asked if there was any thought of how individuals in these locked facilities will have access to information on where and how to find the Division and LME Consumer Advocacy.
  - Dr. Lancaster stated that the information was available.

Proposed Amendment of 10A NCAC 27G .0600 – Area Authority or County Program Monitoring of Facilities and Services

Jim Jarrard, Team Leader, Accountability Team, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0600 on the Area Authority or County Program Monitoring of Facilities and Services. Mr. Jarrard stated that these rules were presented previously to the Committee as the Senate Bill 163 Rules. He also added that this is a Secretary rule and presented for information and comment. Therefore, no action is required.

Mr. Jarrard reviewed the applicability of Senate Bill 163 to the development and revision of these rules. He stated that there was a meeting scheduled with Stephanie Alexander from the NC DHSR, the NC Council of Community Programs and staff from the Division to address two issues. The first issue is the lines between what is the rightful responsibility of DHSR to oversee licensed facilities per statute and rule. The second issue is what the rightful responsibility of the LME is over a licensed endorsed facility or a licensed endorsed provider in the catchment area. However, this is an implementation issue and not a rule issue.

Shealy Thompson, Team Leader, Quality Management, NC DMH/DD/SAS presented the incident response rules in 10A NCAC 27G .0603 and .0604. The revisions that were made in these rules prior to the last presentation consisted of some tweaking of the rule to provide clarification and to address some lessons learned in implementation.

Scheduled Controlled Substances

William Bronson, Manager, Drug Control Unit, NC DMH/DD/SAS gave a presentation on the scheduling of three different drugs. Mr. Bronson stated that controlled substances are scheduled on both the federal and state level based on their ability to be medically used and their potential of harm, addiction, or dependency. The federal government will schedule drugs and then the Division's Drug Control Unit will consult the NC Commission for MH/DD/SAS to have them scheduled. The schedules should be kept as consistent as possible between the federal and state level. Mr. Bronson stated that he researched what drugs had not been brought before the Commission since the federal government has taken action and there are two drugs that require review. There is also one substance that was rescheduled by the federal government in 2002 and is causing problems because the State had it scheduled differently than the federal government. The following recommendations for scheduling these drugs were made:

- Lisdexamfetamine into Schedule II
- Embutramide into Schedule II
- Buprenorphine from NC Schedule IV to NC Schedule III

Upon motion, second and unanimous vote the Rules Committee approved the recommendation to the full Commission that these drugs be placed on the recommended schedules.

There being no further business, the Rules Committee meeting adjourned at 12:15 pm with the Advisory Committee meeting scheduled to begin following lunch at approximately 1:15 pm.